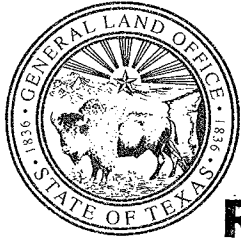


TEXAS



GENERAL LAND OFFICE

JERRY PATTERSON, COMMISSIONER

RECEIVED

RQ-1019-6A

November 22, 2011

NOV 21 2011

FILE # ML-46878-11

I.D. # 46878

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 82548
Austin, TX 78711-2548

OPINION COMMITTEE

RE: Request for Opinion on whether the Comptroller of Public Accounts had the authority to commit to support an event with the Major Event Trust Fund without first receiving a request from a local government or non-profit or without first determining the incremental increase of tax receipts attributable to the event.

Dear General Abbott:

As Texas Land Commissioner, an office authorized to request your ruling under Government Code § 402.042(b) as head of the General Land Office (GLO) and School Land Board (SLB), I respectfully request your opinion regarding whether a commitment of Major Event Trust Fund (METF) funds by the Texas Comptroller of Public Accounts (Comptroller), directly to an event organizer, prior to her receipt of a request from a local government or authorized non-profit, and without analysis of the incremental increase of tax receipts attributable to the event is within the scope of the Comptroller's authority under Tex. Rev. Civ. Stat. Ann. Art. 5190.14 § 5A. The GLO manages land dedicated to the Permanent School Fund (PSF), at the direction of the SLB, and the value of a significant tract may be affected by the way in which the Comptroller utilizes the METF. The GLO requests your opinion in this matter to resolve uncertainty so that the GLO may better maximize the value of this PSF-dedicated property.

Background

The Major Event Trust Fund originated during the 78th Regular Legislative Session as Senate Bill 275 under which it was called the "Other Events Trust Fund." In 2009, Senate Bill 1515 renamed the trust fund the METF and amended the statute governing its use to allow the fund to be used to support a Formula One automobile race. The amendment also incorporated changes that allow the Comptroller to disburse METF funds prior to an event that, based on the Comptroller's estimate, will result in more the \$15 million in tax revenue. *See* Tex. Rev. Civ. Stat. Ann. Art. 5190.14 § 5A(r).

On May 10, 2010, the Comptroller sent a letter to Formula One World Championship Limited certifying that:

Stephen F. Austin Building • 1700 North Congress Avenue • Austin, Texas 78701-1495

Post Office Box 12873 • Austin, Texas 78711-2873

512-463-5001 • 800-998-4GLO

www.glo.state.tx.us

With the understanding that the first Formula 1 United States Grand Prix race will be held in Texas in 2012, full funding of the entire sanction for 2012 will be paid to Formula One World Championship Limited ("FOWC") no later than July 31st, 2011.

In subsequent years, two through ten, of the race promotion contract, i.e. 2013 through 2021, we will be sending \$25 million dollars [sic] to FOWC by the end of July 31st of each year preceding the actual race event.

As of May 10, 2010, no local organizing committee, endorsing municipality, or endorsing county had submitted a request to determine the incremental tax increase that would result from the event. *See* Tex. Rev. Civ. Stats. Ann. Art. 5190.14 § 5A(b). In addition, no determination of the incremental tax increase had been completed. *See Id.* § 5A(c). Similarly, the market area that is likely to experience measurable economic impact had not been established. *See Id.* § 5A(d).

On May 25, 2010, Formula One World Championship Limited and Formula One Administration Limited (collectively, Formula One) announced that a race was to be held in Austin, Texas during its 2012 season. In the same announcement, Formula One stated that it intended to hold the race in Austin on an annual basis for ten years. In July 2010, the site of a proposed track on which the Formula One race would be run southeast of Austin was announced.

An approximately 650-acre tract, dedicated to the PSF, is located in the immediate vicinity of the proposed track. The market value of the PSF tract will be greatly affected by the planned track, which may also depend on whether the Comptroller's commitment is consistent with her authority under the statute.

Question Presented

- 1. Did the Comptroller have the authority to commit METF funds prior to receipt of a request from a local government or authorized non-profit, and without analysis of the potential tax impact of an event?**

Discussion

For the reasons state below, the GLO asserts that the Comptroller exceeded her authority under Art. 5190.14 § 5A in her letter of May 10, 2010 by committing to fund an Austin Formula One race without having received a request from an endorsing entity and without having completed the required incremental tax impact analysis.

The Comptroller did not have the authority to offer State funds to pay the Formula One sanction of \$25 million per year in her letter of May 10, 2010.

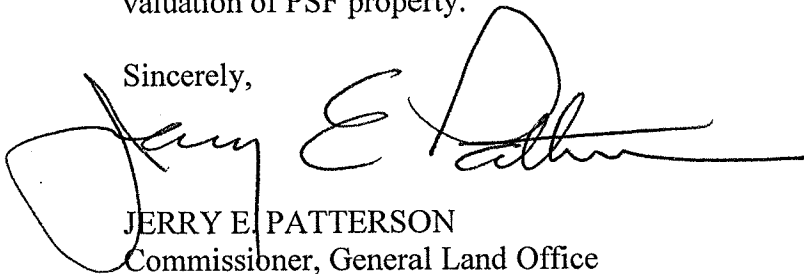
While Art. 5190.14 § 5A grants to the Comptroller the significant authority to disburse METF funds “without appropriation” in amounts determined “in accordance with procedures developed by the comptroller . . .” that authority is limited. See Art. 5190.14 §§ 5A (d), (b). First, the Comptroller is directed to begin acting upon a request for funding from “a local organizing committee, endorsing municipality, or endorsing county.” On May 10, 2010, the Comptroller had not received any such request, and her promise of METF funds to support such a race was outside her authority. The statute goes on to require that the Comptroller determine the proposed event’s incremental increase on several sources of tax revenue. *Id.* at § (b). The statute requires that the determination be based on “information submitted by the local organizing committee, endorsing municipality, or endorsing county” *Id.* at § (b-1). Prior to the May 10, 2010 letter, any such determination would fail to satisfy the statute’s requirement because no information could have been submitted by the required local entity. The statute next requires that the Comptroller establish a market area likely to be impacted by the event. *Id.* at § (d). Again, it appears that the Comptroller made no effort to satisfy the statutory requirement.

Without the benefit of a endorsing entity or reliable information on which to base a commitment of Texas tax revenue, the Comptroller committed \$250,000,000,000.00 over ten years to Formula One World Championship Limited. This commitment exceeded the Comptroller’s authority and ignored the statutory requirements of Art. 5190.14 § 5A.

Conclusion

The Comptroller’s letter of May 10, 2010, committed METF funds in a manner inconsistent with her authority. In her zeal to bring a Formula One race to the State of Texas, the Comptroller negotiated and committed to the Formula One organizers without satisfying the statutory requirements of local support and economic impact analysis. While recent events have caused the Comptroller to withdraw from her former commitments, the Attorney General should clarify whether actions like the Comptroller took on May 10, 2010, are permitted under Texas law. The resultant confusion in the case of the Formula One track has been detrimental to the GLO’s stewardship of PSF property and, if similar actions are again taken, could further challenge the accurate valuation of PSF property.

Sincerely,



JERRY E. PATTERSON
Commissioner, General Land Office

Enclosure: Texas Comptroller of Public Accounts correspondence dated May 10, 2010

TEXAS COMPTROLLER *of* PUBLIC ACCOUNTS

S U S A N
C O M B S

May 10, 2010

Formula One World Championship Limited
6 Princes Gate
London SW7 1QJ
England
Attn: Mr. Ecclestone

Dear Sirs:

In response to the requirements of the race promotion contract for the Formula 1 United States Grand Prix in Texas, I hereby certify the following:

With the understanding that the first Formula 1 United States Grand Prix race will be held in Texas in 2012, full funding of the entire sanction for 2012 will be paid to Formula One World Championship Limited ("FOWC") no later than July 31st, 2011.

In subsequent years, two through ten, of the race promotion contract, i.e. 2013 through 2021, we will be sending \$25 million dollars to FOWC by the end of July 31st of each year preceding the actual race event.

We look forward with great enthusiasm to this event and a successful mutually beneficial relationship for many years to come.

Sincerely,



Susan Combs
Texas Comptroller of Public Accounts